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MEMORANDUM

TO: All Employees of the Executive Branch
FROM: Mark A. Reilly, Chief Legal Counsel
DATE: March 15, 2007 (revised April 12, 2011)
RE: Restrictions on Political Activities by Compensated State Employees

As state employees, we are obliged to understand and comply with the laws concerning political activity by state employees. This memorandum summarizes the major rules governing how and when compensated state employees may participate in political activity. This memorandum cannot address every situation and we encourage you to contact the General Counsel or other designated lawyer in your department or agency, or the State Ethics Commission or the Office of Campaign and Political Finance, if you wish to discuss a particular question.

The basic principles are that public employees may not engage in political activity on public time and that public resources are to be used for governmental purposes, and not for political or other personal activities.

In most cases, you as an individual are free to engage in political activity on your own time, subject to the limitations outlined below. "Political activity" includes any activity that supports or opposes a federal, state or local candidate or political party or a state or local ballot question. You may not, however, solicit or receive, directly or indirectly, any contribution or anything of value for **any** political purpose.

The general guidelines are as follows.

YOU MAY NOT:

1. Use any public resources, including those of any city, town, authority, or subdivision of the Commonwealth, for campaign or other political purposes. "Public resources" means virtually anything that is paid for by the taxpayers,

including computers, email accounts, office equipment and supplies, vehicles, buildings and the paid time of public employees. For instance, you may not:

- for campaign or other political purposes, use publicly provided utilities, computers, email accounts, blackberries, telephones, postage, postage machines, copying machines, typewriters, or fax machines;
- use state resources to prepare or deliver campaign statements; or
- use state resources in connection with press conferences or press availabilities for predominantly campaign purposes.¹

2. Engage in **any** campaign or political activity during regular work hours. If you wish to engage in political activity during your lunch break, you must schedule the time of your break with your supervisor in advance.² This means that during work hours you may not, for example:

- go to the offices of the Republican or Democratic State Committees;
- write, edit or proofread campaign speeches;
- perform advance preparation work for campaign appearances; or
- hold signs, make telephone calls, write letters or stuff envelopes for campaign purposes.

You may engage in campaign or political activities on your own time only, which would include **vacation** time or **personal** time. Your timesheet must reflect any such personal or vacation time.

3. Use the state seal or coat of arms, even on privately purchased stationary or other materials in connection with campaign or political purposes.
4. Use your official title in connection with any political activity that you engage in on your own time.
5. Solicit or receive, directly or indirectly, any contribution or anything of value for **any** political purpose. "Political purpose" includes fundraising activity on behalf of any candidate or political committee, including parties, political action committees and ballot question committees on any level—local, state or federal. You may not, for example:

- serve as treasurer of a political campaign;
- identify or provide names to a political committee to be solicited;

¹ While you may answer spontaneously questions posed by the press, the best practice is to refrain from commenting publicly on political campaigns and candidacies at your workplace unless you obtain permission in advance from the State Ethics Commission to do otherwise.

² You may not, however, engage in political *fundraising* even during your lunch break, because M.G.L. c. 55, § 13 prohibits public employees from soliciting or receiving political contributions at any time, i.e., even during non-work hours. This restriction does not apply to elected officials.

- participate in fund-raising committees or fund-raising planning meetings;
 - make or threaten to make any government benefits, business or employment contingent on contributions of funds or services to any campaign;
 - be the featured speaker at a political fund-raising event;³
 - allow your name to be used on a political committee's stationary if the stationary is used in soliciting funds;
 - host a fund-raising event at your home;⁴
 - distribute or sell tickets to political fund-raising events; or
 - perform any volunteer work that is directly connected with political fund-raising.
6. Represent anyone other than the Commonwealth, including a campaign committee, in connection with any matter in which the Commonwealth is a party or has a substantial interest.
 7. Solicit campaign assistance from anyone who has a matter pending before you or before any of your subordinates.
 8. Require other state employees to contribute to or participate in campaign activities, or penalize state employees who do not contribute to or participate in campaign activities in their spare time.
 9. Use confidential information gained by reason of your official position to engage in any political activity, including political fund-raising (or for any other personal interest). Confidential information may include, but is not limited to: databases, names, addresses, telephone numbers, and e-mail addresses.

YOU MAY (subject to the above restrictions):

1. Be a member of a political organization or committee;
2. Make a political contribution within legal limits, as long as the contribution is given to a campaign committee, and not to another employee;
3. Donate your time to a political campaign outside of working hours, including on vacation time (as long as you do not participate in fundraising activities for a political campaign at any time);

³ According to the Office of Campaign and Political Finance ("OCPF"), state law does not prohibit a public employee from attending and speaking about non-fundraising matters at a political fundraiser (provided that the public employee's attendance and remarks are not used as a "draw" to the event or to otherwise enhance political fund-raising efforts).

⁴ OCPF has determined that the spouse of a state employee, under particular circumstances, may host a fund-raising event in his or her home, even if the home is jointly owned by the state employee. However, the state employee must not participate in any way in soliciting or receiving contributions.

4. Attend political fund-raisers, although you may not be used as a "draw" for an event;
5. Run for political office, provided a committee is organized to solicit and receive contributions on your behalf. Before you run for office, you must ask your supervisor whether it can be done consistent with your obligations to the Commonwealth. Your committee must ensure that it does not solicit or receive contributions from any person having an interest in any particular matter in which you have participated during the course of your employment or which is the subject of your official responsibility.
6. If you are an appointed policy-maker, you may take certain actions regarding ballot questions to inform and guide public debate on public issues within the scope of your official responsibility.

For further information about how the Conflict of Interest law regulates political activity, consult the State Ethics Commission at (617) 371-9500 or the Commission's Revised Advisory on Political Activity (No. 11-1), which can be found at: http://www.mass.gov/?pageID=ethterminal&L=4&L0=Home&L1=Education+and+Training+Resources&L2=Educational+Materials&L3=Advisories&sid=leth&b=terminalcontent&f=legal_adv1101&csid=leth. For further information about how the Campaign Finance law applies to public employees, consult the Office of Campaign and Political Finance at (800) 462-OCPF or at www.state.ma.us/OCPF, or the OCPF's Campaign Finance Guide, which can be found at: http://www.ocpf.net/guides/guide_pub_emp.pdf.

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Advisory 11-1: Public Employee Political Activity

Introduction

Public employees -- employees and volunteers of state, county, and municipal agencies -- have most of the same rights as other citizens to engage in private political activity. However, the conflict of interest law, G.L. c. 268A, restricts some political activity of public employees. In addition, the campaign finance law, G.L. c. 55, restricts public employees' political fundraising. The campaign finance law is enforced by the Office of Campaign and Political Finance ("OCPF"). Questions regarding the campaign finance law should be directed to OCPF. This Advisory addresses restrictions on public employee political activity imposed by the conflict of interest law.

In their public roles, public employees are subject to Section 23(b)(2)(ii) of the conflict of interest law. That section provides that public employees may not knowingly (or with reason to know) use or attempt to use their official positions to secure for themselves or others unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals. Section 23(b)(2)(ii) restricts the extent to which public employees may engage in political activity in their public roles, or use public resources in connection with such political activity.

This Advisory explains the restrictions placed by the conflict of interest law on public employee political activity. This Advisory addresses "**election-related political activity**," which is activity directed at influencing people to vote for or against candidates and/or ballot initiatives. This Advisory also addresses "**non-election-related political activity**," which is activity directed at influencing governmental decision-makers which does not involve an election.

Non-election-related political activities include, for example, supporting or opposing: town meeting warrant articles, municipal bylaw changes, user fees for public services or school activities, changes to funding for public services, the renovation or construction of public buildings, roads, bridges, and other public infrastructure, closure of public libraries, schools or fire stations, and changes to state and local tax rates, laws, regulations, and budgets.

The restrictions on public employee political activity are not the same for all public positions. Elected officials may engage in more political activity than appointed officials and employees. Public employees who hold policy-making positions have more leeway to make public statements and take official action on political issues than do non-policy-makers. This Advisory has separate sections addressing the restrictions for each type of position.

How to Use this Advisory

Which parts of this Advisory apply to you depends on the type of public position you hold. Different rules apply to elected and appointed public employees. Different rules apply to policy-making public employees and non-policy-makers. A "policy-making" position is one in the top management level of a governmental agency in which the holder actively participates in determining the agency's policies or plans of action. A non-policy-maker does not participate in determining agency policy, but instead carries out or puts into action policies determined by others. All elected positions are policy-making. Chief executives, town and city managers, department heads and board members are presumed to hold policy-making positions.

If you are an **ELECTED** public employee, the following sections of this Advisory apply to you: Sections 1, 2, 3, 4, and 5.

If you hold a **POLICY-MAKING** public position, the following sections of this Advisory apply to you: Sections 1, 2, 3, and 5.

If you were **APPOINTED** to your public position and are not a policy-maker, the following sections of this Advisory apply to you: Sections 1, 2, and 5.

If you have a question about **election-related political activity** by public employees, see Sections 1 through 4 of this Advisory.

If you have a question about **non-election-related political activity** by public employees, see Section 5 of this Advisory.

1. May Do: Political Activities by Public Employees That Generally Do Not Raise Conflict of Interest Law Issues

In general, public employees of all types may engage in private political activity, subject to the restrictions on political fundraising imposed by G.L. c. 55. The conflict of interest law does not prohibit a public employee from engaging in political activity on his own time, using his own or other private resources, and when he is acting for himself and not as an agent or representative of anyone else.

Below are some examples of **election-related political activity** that public employees may engage in privately without raising any issue under the conflict of interest law, provided that they use no public resources in connection with such activity.

Example: An appointed Assistant District Attorney may run for State Representative, as long as he does so on his own time and without using his paid public work time, his official title, or public resources such as his office email address or copy machine. The conflict of interest law does not, however, prohibit the Assistant District Attorney from including the fact of his public service in biographical information contained in his campaign literature or in his party primary nomination papers (and on the primary ballot) as allowed by state elections law.^[1] The conflict of interest law does not require him to take a leave of absence from his Assistant District Attorney position to run, although the District Attorney's office may have its own policy that does so.

Example: A public school teacher may support a local ballot question, such as a tax limit override question, if she does so on her own time, and without the use of public resources. She may serve on a ballot question committee, so long as she does so without pay and does not fundraise or act as the agent for the campaign in any matter involving her town. She may distribute campaign literature, make get-out-the vote telephone calls, conduct campaign polls and research, drive voters to the polls, and display or hold signs.

Example: A state agency employee may support the election (or reelection) of a candidate for elected public office on his own time, and without the use of public resources. He may serve on a candidate's campaign committee (in an uncompensated capacity not involving fundraising or acting as the agent for the campaign in any matter involving the state), distribute campaign literature, make get-out-the vote telephone calls, conduct campaign polls and research, drive voters to the polls, and display or hold signs.

Below are further examples of election-related political activity that any public employee may do on his own time and without the use of his official title or public resources without raising any issue under the conflict of interest law:

- with his own stationery, computer, or wireless account, write letters to the editors or blog about political issues.
- distribute advocacy literature or hold a sign expressing his political views.
- with his own computer and email or wireless account, send emails or text messages expressing his political views.
- contribute his own funds in compliance with the campaign finance law to a campaign committee for a candidate or concerning a ballot question.
- answer voter survey questions, and
- vote in any election.

Similarly, public employees may engage in **non-election-related political activity** on their own time, without the use of public resources and as private citizens. Below are examples of non-election-related political activity that do not raise any issue under the conflict of interest law.

Example: A member of a town Conservation Commission, acting as a private citizen and without using his title or any public resources, may participate in a grass roots group's efforts to convince local government to build a new public school, provided that he does not act as the group's agent or representative and is not compensated for his participation. He may attend and speak on his own behalf at meetings concerning political issues; use his own stationery, computer, or wireless account to write letters to the editor or blogs; distribute advocacy literature or hold a political sign; use his own computer, email, or wireless account to send emails or text messages expressing his political views; draft and propose a warrant article for town meeting; attend public hearings concerning the proposal; and vote at town meeting.

Any public employee, acting in her official capacity and using public resources, and acting in a neutral and non-partisan manner, may notify the public that a state, county or federal election will be held on a certain date and encourage all voters to vote. A public employee may also neutrally notify the public generally that a town meeting will be held on a certain date and neutrally encourage all voters or members to attend. Public resources may not be used to notify only a subset of voters in order to influence the outcome of the vote or meeting. For example, notifying only the parents of school children of a ballot question whether to fund a new public school, and not notifying childless homeowners, would be prohibited, because it would not be neutral.

2. May Not Do: Political Activities by Public Employees That Generally Are Prohibited by the Conflict of Interest Law

In general, a public employee may not use his public position to engage in political activity. Section 23(b)(2)(ii) of the conflict of interest law prohibits the use of one's public position to engage in political activity, because a public employee who does so is using his official position to secure for himself or others (such as a candidate or a ballot question committee) unwarranted privileges of substantial value that are not properly available to similarly situated persons.

There are two exceptions to this general rule. First, elected officials, and public employees who hold policy-making positions, have more leeway to make statements about and take action concerning ballot questions, while using their public positions and public resources, than do appointed public employees who do not hold policy-making positions. Second, elected officials have greater latitude than non-elected public employees to engage in certain other election-related political activities. These exceptions are discussed in more detail below in sections 3 and 4.

Subject to these exceptions, a public employee **may not** engage in political activity, whether election-related or non-election related, on his public work time: while acting in his official capacity or while in his official uniform; in a

public building (except where equal access for such political activity is allowed to all similarly situated persons); or with the use of other public resources, such as staff time, public office space and facilities, public office equipment such as computers, copiers, and communications equipment, public websites and links to public websites, or public office supplies such as official stationery.

A public employee who engages in such political activity, unless the activity is of truly minimal duration or significance (such as wearing a political campaign button to work in a public office), violates the conflict of interest law.

Example: A state employee sends out a blast email urging all her contacts to vote for a particular candidate for Governor. This is a violation of the conflict of interest law, because she is using public resources to support a particular candidate.

Example: A state legislator directs his district office staff, who are paid state employees, to use paid state work time to visit voters in his district, pass out his campaign literature, and urge voters to vote for him. This is a violation of the conflict of interest law, because he is using his official position and public resources to gain election.

Example: A police chief urges voters entering a polling place to vote for a particular candidate for District Attorney. The police chief is wearing his uniform and standing near the entrance to the polling place while he does so. This violates the conflict of interest law because he is using his official uniform to support that candidate.

Example: An incumbent Selectman seeking reelection uses her official position to gain access to the Board of Selectmen's meeting room, which under town policy is not available for private use, to make a campaign video featuring herself in the meeting room standing next to the town's seal, urging voters to vote for her, and soliciting campaign donations. This violates the law, because the Selectman is using her official position to gain access to and use the meeting room and the town seal, both of which are public resources, for the private purpose of securing her reelection to the Board. The Selectman would not violate the law by using in her campaign materials a news media photograph of herself in the Board's meeting room taken during a public meeting, even if the photograph included the town seal, because then she would not be using her official position to get an unwarranted privilege.

Example: Municipal Department of Public Works employees who are union officers use paid work time to attend a fundraiser for a mayoral candidate as representatives of their union. This violates the conflict of interest law because they are using their public work time, which is a public resource, to obtain an unwarranted privilege for themselves, the use of work time for private purposes.

Example: A City Councilor puts links on her city council website to her campaign website and to websites of other candidates who belong to her political party. This violates the conflict of interest law, because she is using her City Council website to obtain an unwarranted privilege of substantial value for herself, and to confer such an unwarranted privilege on the other candidates whose websites are linked.

Below are further examples of election-related political activities that public employees MAY NOT DO. Public employees MAY NOT:

- send campaign-related emails using official computers or email,
- send campaign-related documents using official fax machines,
- use a public office telephone to make campaign-related calls,
- use on-duty public employees or public supplies, materials, or equipment to create, reproduce or distribute campaign materials,

- use official letterhead stationery, even if privately paid for, to advocate for or endorse a candidate or to support or oppose a ballot question.
- use any public seal, logo, or insignia, on campaign materials.
- use public office staff or equipment to do any of the following: conduct campaign research, write campaign or political speeches, conduct campaign polls, answer campaign questions, or create or maintain voter or supporter databases or campaign website or links.
- use public office staff or space for a press conference to endorse, promote or oppose a candidate or ballot question position.
- if appointed, use a public title while campaigning.
- if appointed, use a public title to endorse a candidate,
- if appointed, use a public title to support or oppose a ballot question (except to the extent appointed policy-makers are permitted to do so, as further discussed below in Section 3 of this Advisory),
- if appointed, perform election campaign tasks while on public work time,
- hold campaign planning meetings or any other campaign-related event in public office space, or
- wear a public employee uniform while performing campaign tasks or urging support for a particular candidate or measure.

Political fundraising is regulated by G.L. c. 55, the campaign finance law. In addition to the restrictions of Chapter 55, Section 23(b)(2)(ii) of the conflict of interest law prohibits all public employees – whether elected, appointed, or policy-making – from directly or indirectly soliciting political contributions of any kind, including personal services, in any situation where such a solicitation is inherently coercive.

A solicitation is inherently coercive, and therefore prohibited by the conflict of interest law, if it is directed by a public employee at his subordinate, persons or entities doing business with or having a matter pending before his public agency, or anyone subject to his or his agency's authority. By contrast, campaign contributions which are voluntarily made in response to a general rather than a targeted solicitation may be accepted from such sources if they are received and reported by the official's campaign committee in compliance with the campaign finance law.

Example: A Superintendent of Schools suggests to her office staff that they contribute to the campaign of a School Committee candidate. This is inherently coercive because it is directed at subordinate employees, and violates the conflict of interest law.

Example: An incumbent candidate for reelection to a School Committee personally solicits, or directs his campaign workers to solicit, donations from local businesses that have contracts with the School Department. Such solicitations are inherently coercive because they are targeted at persons doing business with the candidate's agency, who are subject to his official authority. Therefore, such solicitations violate the conflict of interest law. The candidate may not direct his campaign workers to do what he is prohibited from doing himself.

The conflict of interest law also restricts the extent to which a public employee may represent campaigns and grass roots groups in dealings with government agencies. A public employee who is not serving in a "special" position may not represent a political campaign or a grass roots group in its dealings with public agencies at his level of government (state, county, or municipal), pursuant to Sections 4, 11 and 17 of the law.

Example: A full-time municipal employee may not (even as an unpaid volunteer) sign a municipal campaign finance report to be filed with the town clerk, nor could he be paid to help prepare the report even if he did not sign or deliver

it.

Example: A full-time state employee with the Department of Conservation and Recreation may not act as a candidate's attorney (even on her own time and without a fee) before the State Ballot Law Commission, nor could she be paid to review signatures on nomination papers, even if she did not appear before the Commission.

These restrictions generally apply to "special" public employees only as to matters in which the employee participated, or for which the employee had official responsibility, or which is pending in the special public employee's agency.

Example: A town Conservation Commissioner whose position has been designated as "special" may sign a municipal campaign finance report on behalf of a candidate for selectman and file the report with the town clerk because Conservation Commissioners have no official responsibility for campaign finance reports.

Example: A town clerk whose position has been designated as "special" by the Select Board may not sign such a report to be filed with her own office, because, as town clerk, she has official responsibility for receiving such reports.

If you are uncertain whether your position is a "special" position for purposes of the conflict of interest law, you should obtain advice from the Ethics Commission's Legal Division by calling (617) 371-9500, or online at www.mass.gov/ethics.

3. May Do: Elected and Appointed Policy-making Public Employees and Ballot Questions

Elected public employees, and appointed policy-makers, have more leeway under the conflict of interest law to take certain actions regarding ballot questions than do non-policy-makers. The reason for this is that part of the role of elected public employees and policy-makers is to inform and guide public debate on public issues.

For example, on the municipal level, municipal police chiefs, fire chiefs, library directors and school superintendents, although appointed, serve in policy-making positions and are customarily expected (if not required) to take positions on matters within the purview of or affecting their respective agencies. A police or fire chief is expected to take a position on whether a new public safety building is needed. A library director is expected to have a view on whether the public library should be expanded. A school superintendent is expected to recommend to the School Committee and the town's voters whether the public high school should be renovated or replaced. Therefore, by taking these actions, these policy-making public employees do not obtain or confer any unwarranted privileges of substantial value in violation of Section 23(b)(2)(ii).

By contrast, rank and file police officers and firefighters, public school teachers, and librarians serve in non-policy-making positions, and it is not part of their responsibilities to use public resources or their official positions to inform and guide the public discussion on these issues (although they may of course do so as private citizens).

The extent to which elected public employees and policy-makers may use their official positions and public resources to make statements about ballot questions depends upon the positions they hold. Specifically, elected officials and appointed policy-makers may take official actions concerning ballot questions relating to their particular areas of official responsibility. They may also use public resources to inform the public, as opposed to for purposes of advocacy, without violating the conflict of interest law.

The conflict of interest law does not define the scope of a public employee's official responsibility. Such scope may be defined by applicable statute, precedent, bylaw, job description or practice. For example, the official responsibility

of a state agency commissioner may be defined in the agency's enabling law. The official responsibility of a police chief may be defined by state statute, local ordinance or bylaw, or employment contract. Because the conflict of interest law does not define it, the Commission's Legal Division will not advise on the scope of a public employee's official responsibility and will refer the employee to agency or municipal counsel for a determination as to whether the public employee is in a relevant policy-making position with respect to a particular ballot question. Municipalities vary in how they define the official responsibilities of particular positions. For instance, one city may want its police chief to take public positions on renovating a public safety building, while another may draft its chief's employment contract to include a provision forbidding her from doing so.

Below are some examples of actions that elected officials and policy-makers may take with respect to ballot questions, consistent with the conflict of interest law.

Example: A question concerning school aid will be on the statewide ballot at the next election. A School Committee may discuss the question at its own meetings and at informational meetings sponsored by a public or private group. It may invite or permit ballot question committees to address its meetings, or to use public buildings for meetings, provided that the invitations and permissions are made in accordance with a policy of equal access for all viewpoints. It may vote to take a position on the ballot question, and issue an official statement reporting that position. It may also use any means by which official actions are usually reported (such as posting on real and virtual bulletin boards and on websites, and broadcasting public meetings via local public access cable television) to distribute information about their position. In reporting its position, the School Committee should only provide factual information and not engage in advocacy.

Example: A question concerning legalizing medical use of marijuana will be on the statewide ballot at the next election. The Colonel of State Police, acting in her official capacity, may assign her staff to use paid work time to analyze the impact of this proposal on agency operations. In her official capacity, on behalf of the State Police and without any compensation apart from her State Police salary, the Colonel may also: provide the resulting analysis to persons requesting it or attending public meetings of the agency or visiting its office; post the analysis on a governmental bulletin board or website, provided that it does not advocate for or against the ballot question; hold an informational forum, or participate in such a forum held by a private group; and communicate with the press concerning the ballot question and its potential impact on the State Police, but only in a manner and to a degree consistent with the established practices of the State Police. The conflict of interest law forbids the Colonel from doing any of these things for pay apart from her State Police salary; she may not be paid by a ballot question committee to do the actions listed in this example.

Beyond this limited non-advocacy activity directed at *informing* the public (including the fact of their own position for or against a ballot question), elected officials and appointed policy-makers **may not** use public resources for election-related political purposes (except only to the limited extent allowed to elected officials as explained in Section 4 below). Thus, neither an individual appointed policy-maker nor a board comprised of such employees may use their individual titles or their board name in a political advertisement in favor of or against a ballot question. No public employee may use public resources to send out a mass mailing, place an advertisement in a newspaper, or distribute to voters, directly or through others, such as school children, a flyer concerning the substance of a ballot question.

By contrast, while elected officials may not use their board or agency name in such advertisements, they may use their individual titles, see Section 4 below.

4. May Do: Election-Related Political Activities in which Only Elected Public Employees May Engage

Elected public employees have greater latitude under the conflict of interest law to engage in certain election-related political activities than do appointed public employees, even those holding policy-making positions. This is in part because elected public employees are generally elected to perform the functions of their office rather than to provide a required number of hours of service in exchange for compensation, and in part because elected public employees

normally must participate in election-related political activities in order to continue in their elected positions. For that reason, elected officials do not obtain or confer unwarranted privileges of substantial value by engaging in such activities, and therefore do not violate Section 23(b)(2)(ii) of the conflict of interest law.

Most elected public employees are not legally required to work a minimum number of hours per week or a specified work schedule, or to maintain fixed office hours. This category of elected officials, which includes most holders of state, county and municipal elected offices, are not required to take time off from their public positions in order to campaign for reelection or for election to a new office, or to confine their campaigning to nights and weekends. Thus, an elected public official who does not have required public work hours is not prohibited by the conflict of interest law from campaigning for reelection, or for or against a ballot question, during the hours in which he typically or normally performs his public duties, or during what would otherwise be considered "normal business hours."

Elected public employees are also not prohibited by the conflict of interest law from referring to or identifying themselves by their official titles in campaigning for reelection or for election to new office, as well as in political fundraising activities, whether for themselves or others. Similarly, elected public employees are not prohibited from identifying themselves by their individual official titles in endorsing other candidates for elected office, and in supporting or opposing ballot questions.

Finally, elected public employees are not prohibited by the conflict of interest law from, in their official capacity, either individually or as a governmental body (such as a Board of Selectmen, City Council or School Committee) stating their viewpoints and positions on ballot questions regardless of the subject matter of the ballot questions. However, unlike with ballot questions, elected boards and other elected governmental bodies may not as a body endorse or oppose candidates for offices elected by the voters.

5. Non-Election-Related Political Activity: What Public Employees May and May Not Do

Not all political activity involves elections. Political activity may involve matters which will not be decided by election, or which will occur before any election has been scheduled. Examples of such political activity includes supporting or opposing town meeting warrant articles, municipal bylaw changes, and the other types of decisions set forth in the Introduction to this Advisory.

The prohibition of Section 23(b)(2)(ii) of the conflict of interest law against the use of official position to obtain or confer unwarranted privileges of substantial value applies to non-election-related political activity as well as to election-related activity. As with election-related activity, the applicable restrictions depend upon the particular public position that a person holds. This section of this Advisory describes the restrictions on non-election-related political activity under the conflict of interest law.

It is important to note that once an election is scheduled (or, in some cases, even just anticipated) concerning a matter, political activity relating to the matter will be deemed to be election-related political activity and a public employee's involvement in such activity will be subject to the greater restrictions described above in the sections of this Advisory concerning election-related political activity. Most importantly, election-related political activity is subject to the restrictions of the campaign finance law and the public employee wishing to participate in such activity must observe those limits. Any action prohibited by the campaign finance law will generally be considered "unwarranted" for purposes of Section 23(b)(2)(ii). A public employee who is uncertain about the restrictions imposed by the campaign finance law should consult OCPF.

A. Appointed Non-policy-making Public Employees

Appointed public employees who do not hold positions in the top management level of their agencies and do not make policy for their agencies are barred by the conflict of interest law from engaging in non-election-related political activity in their official capacity or during their public work hours. The only exception to this is if the employee is authorized and directed by a superior elected or appointed policy-making public employee with the authority to engage in non-election-related political activities concerning matters within the purview of his agency to participate in such activities in support of the superior's own lawful political activity.

Example: A non-policymaking public school teacher may not, during her school work hours, prepare, produce and distribute to municipal officials and residents a flier in support of a new public school, or hold a sign in front of the school supporting the construction of a new school, or attend meetings of a grass roots group supporting the construction of a new school. She also may not use her school email or computer to send out a mass message supporting the construction of a new school, or use her school website to advocate for the construction of a new school.

Example: A rank and file police officer or firefighter may not, while on duty or in uniform, hold a sign supporting the construction of a new public safety building, and may not allow his or her official title and rank to be used in an advertisement, flyer or other materials distributed in support of the new building.

However, participation in non-election-related political activities is not prohibited where it is duly authorized by a superior elected or appointed policy-making public employee with the authority to engage himself in such activities concerning matters within the purview of his agency, as set forth in Subsection B below.

Example: A Superintendent of Schools may authorize and direct subordinates to engage in non-election-related political activities in favor of a new school in furtherance of the superintendent's own lawful advocacy for the new school as an appointed policy-maker acting within the purview of his own agency. The subordinates engaging in those activities, as lawfully authorized and directed by the Superintendent, do not violate the law. By contrast, the Superintendent may not authorize or direct subordinate employees to engage in non-election related political activities in favor of a new public safety building, as that would not be a matter within the purview of the school department, and not an activity in which the Superintendent himself could legally engage.

B. Appointed Policy-making Public Employees

Just as appointed policy-makers have more leeway to take positions on election-related matters within the purview of or affecting their respective agencies, they also have more leeway to take such actions with respect to non-election-related matters. This is because a policy-maker's use of his official title, public work time and other public resources for that purpose, if within the purview of or affecting his agency, is within his responsibilities and therefore not unwarranted under Section 23(b)(2)(ii).

Example: A police chief may, in his official capacity and during his public work hours, support, and seek to convince the town meeting or the city council to support, the construction of a new public safety building. The chief may write a letter to the editor of a local newspaper in his capacity as chief advocating for a new public safety building, allow his name and official title to be used in a newspaper advertisement supporting the construction of a new public safety building, and advocate as chief for a new public safety building on the police department's website. He could also, while on duty and in uniform, attend meetings of public boards or visit public officials in their offices in order to advocate for a new public safety building, or telephone, email or otherwise correspond for the same purpose. He could use his subordinates' work time and department funds (if consistent with the department's budget and municipal policy) to prepare and distribute a flyer supporting the new public safety building.

These principles apply to all persons holding appointed policy-making positions, including appointed municipal board members, regarding non-election-related political activities concerning matters *within their official responsibility*. A

police chief **may not**, in his official capacity, engage in similar activities in support of the construction of a new public school or library, as those matters are not within the purview of the police department. Similarly, a public schools superintendent may, in her official capacity, seek to convince the municipal government, including the town meeting, to support a new public school, but not to support a new public safety building or public library, which are outside of the purview of the school department.

C. Elected Officials

Elected officials are presumed to hold policy-making positions and, thus, may engage in the same non-election-related political activities as public employees in appointed policy-making positions. In addition, because they hold their positions by popular vote, elected officials are not required to limit their non-election-related political activities to matters within their respective official responsibilities or within the purview of their own agencies. An elected official generally may, in his official capacity, engage in non-election-related political activities concerning any matter. If, however, an elected official has specific paid work hours, he may engage in such activity during his public work hours only as to matters within his official responsibility or his agency's purview.

Finally, once a matter is anticipated to be or is placed on the ballot for decision by the voters at an election, political activity relating to the matter will be deemed to be election-related political activity and a public employee's involvement in such activity will be subject to the greater restrictions described above in the sections of this Advisory concerning election-related political activity. Election-related political activity is regulated by the campaign finance law, and activity prohibited under that law will generally be impermissible under the conflict of interest law.

DATE AUTHORIZED: March 18, 2011

This Advisory Supersedes Advisory 84-01: Political Activity

[1] Detailed information on the inclusion of official position information on nomination papers and election ballots may be obtained from the Office of the Secretary of the Commonwealth concerning state and county elections and from the city or town clerk concerning municipal elections.

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